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TECHNOLOGY CENTER 2100

In re Application of: Afshar, et al.)
Application No.: 09/514,149)
Filed: February 28, 2000) **DECISION ON PETITION TO**
Attorney Docket No.: IDS-1999-0710) **ACCEPT CORRESPONDENCE AS**
For: PARADIGM IN MULTIMEDIA) **TIMELY FILED UNDER 37 CFR §1.8**
SERVICES CREATION METHODOLOGY,)
AND NEW SERVICE CREATION AND)
SERVICE EXECUTION ENVIRONMENTS)

This is a decision on the Request for Reconsideration of the decision on petition to withdraw the holding of abandonment, filed November 18, 2005. The instant petition is being reconsidered under 37 CFR § 1.8(b) as requesting the acceptance of correspondence as timely filed. The original petition was filed on November 4, 2004 and dismissed in a decision mailed September 21, 2005.

The petition is **DENIED**.

In support of the original petition, Petitioner provided: a copy of the facsimile response indicated to have been filed on April 29, 2003; certificate of transmission certifying that the amendment was transmitted on April 29, 2003, a copy of the SENDING facsimile unit's transmission report confirming that nine pages were sent via facsimile transmission on April 29, 2003. The Request for Reconsideration of the decision on petition (the instant petition) included the text of the original petition and further arguments.

REQUIREMENTS

In considering petitioners' submission under 37 CFR § 1.8(b), the correspondence can be considered timely filed if petitioners meet at least three conditions:

1. Informs the Office of the previous mailing or transmission of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence;
2. Supplies an additional copy of the previously mailed or transmitted correspondence and certificate; and
3. **Includes a statement that attests on a personal knowledge basis or to the satisfaction of the Commissioner to the previous timely mailing or transmission.** If the correspondence was sent by facsimile transmission, a copy of the sending unit's report confirming transmission may be used to support this statement.
[Emphasis added.]

RELIEF REQUESTED

The instant petition requests reconsideration and relief under the standard that the evidence provided attests "to the satisfaction of the Commissioner", as stated in third requirement identified above. In addition, Petitioner argues that the facsimile transmission report (from the sending unit) is not submitted as a substitute for the personal statement, but instead is submitted to support the statement of timely transmission.

ANALYSIS

Initially, and in response to Petitioner's argument, it is noted that in accordance with rule 1.8(b), the "**statement**" referenced in both sentences of the third requirement (reproduced above) is in fact the "personal knowledge **statement**" and not merely a "statement of timely transmission". Thus, the submission of a copy of the sending unit's report, as identified (above) in the rule, is used as evidence to support the "personal knowledge statement", normally also provided.

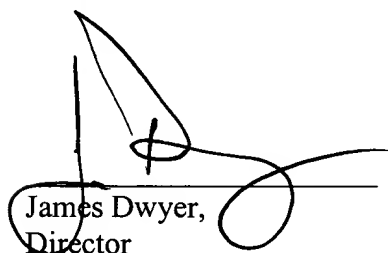
The instant petition fails to provide a personal knowledge statement by the individual sending the original transmission. While the third condition of 37 CFR § 1.8(b) permits submission of the sending unit's transmission report **to support the personal knowledge statement**, it is not intended to be a substitute for such a statement.

Irregardless, and in consideration of the evidence provided to meet the standard of “to the satisfaction of the Commissioner”, a review of the evidence provided shows that the transmission status report provided by Petitioner omits the actual telephone number used in the transmission from the sending unit. As such, Petitioner has failed to provide sufficient evidence as to the timely transmission of the response to the appropriate facsimile number within the USPTO. The presumption that the response was timely and properly transmitted has not been met, therefore, the submission fails to meet the standard “to satisfaction of the Commissioner”, as provided.

It is suggested the practitioner can avoid future problems relating to use of facsimile for official submissions by modifying in-house procedures and following up transmissions with a query to the Office if a facsimile “Auto-Reply” receipt is not received. A facsimile “Auto-Reply” receipt may be used as *prima facia* evidence of timely submission “to the satisfaction of the Commissioner”.

Accordingly, the petition is **DENIED**.

The holding of abandonment is maintained as proper. The petitioner may wish to consider filing a petition to revive the application under 37 CFR § 1.137. Telephone inquiries should be directed to the undersigned at 571-272-3595.

A handwritten signature in black ink, appearing to read 'James Dwyer', is written over a horizontal line. The signature is stylized with a large loop and a crossbar.

James Dwyer,
Director
Technology Center 2100
Computer Architecture, Software, and Information Security